

1 MCGUIREWOODS LLP
2 SUSAN L. GERMAISE SBN #176595
3 1800 Century Park East, 8th Floor
4 Los Angeles, CA 90067-1501
5 Telephone: 310.315.8200
6 Facsimile: 310.315.8210
7 sgermaise@mcguirewoods.com

8 Attorneys for Defendant
9 General Nutrition Corporation
10 erroneously named as GNC Corporation

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13 MICHAEL LERMA and JEREMY
14 GAATZ, On Behalf of Themselves and
15 All Others Similarly Situated,

16 Plaintiff,

17 vs.

18 GNC Corporation, a Delaware
19 corporation,

20 Defendant.

CASE NO. 13-cv-0933 CAB KSC

The Hon. Cathy Ann Bencivengo

**GENERAL NUTRITION
CORPORATION'S NOTICE OF
MOTION AND MOTION TO
DISMISS FIRST AMENDED CLASS
ACTION COMPLAINT**

Date: August 23, 2013

Time: 2:00 p.m.

Courtroom: 4C

NO ORAL ARGUMENT
REQUESTED

21 TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE that on August 23, 2013 at 2:00 p.m., or as soon
23 thereafter as counsel may be heard, in Courtroom 4C of the above-entitled Court,
24 located at 221 West Broadway, San Diego, California 92101, Defendant General
25 Nutrition Corporation ("GNC") will and hereby does move pursuant to Federal
26 Rules of Civil Procedure 8, 9(b), and 12(b)(6) to dismiss Plaintiffs' First Amended
27 Class Action Complaint ("FAC") for failure to state a claim upon which relief can
28 be granted.

1 The motion is made on the following grounds:

2 (1) Plaintiffs have failed to plead facts sufficient to state any claims for
3 violation of California's Unfair Competition Law, Consumer Legal Remedies Act,
4 the Illinois Consumer Fraud and Deceptive Business Practices Act, or breach of
5 express warranty under Rule 8 because the FAC fails to allege sufficient factual
6 matter to state a claim for relief that is plausible on its face. Plaintiffs rely upon a
7 handful of clinical studies that do not test the products sold by GNC, which are at
8 issue in this case, and they do not test the effectiveness of the represented health
9 benefits. Thus, Plaintiffs have failed to plausibly allege that the representations at
10 issue are false;

11 (2) Plaintiffs' vague allegations fail to state claims with the particularity
12 required by Rule 9(b);

13 (3) Plaintiffs fail to plead sufficient facts to support a non-disclosure claim;

14 (4) Plaintiff Lerma fails to plead sufficient facts to support an unlawful or
15 unfair claim under the UCL;

16 (5) Plaintiffs' claim for breach of express warranty fails as a matter of law
17 because they did not provide GNC reasonable notice of any breach prior to initiating
18 this lawsuit.

19 Accordingly, the FAC should be dismissed.

20 This motion is based upon this Notice of Motion, the accompanying
21 Memorandum of Points and Authorities and Exhibits filed concurrently herewith, all
22 other papers and pleadings on file, and the argument of counsel at the hearing of this
23 motion.

24 DATED: June 20, 2013

McGUIREWOODS LLP

25
26 Bv: /s/ Susan L. Germaise
Susan L. Germaise

27 Attorneys for Defendant
28 General Nutrition Corporation

CERTIFICATE OF SERVICE

I, Susan L. Germaise, certify that on June 20, 2013, the foregoing document entitled **GENERAL NUTRITION CORPORATION'S NOTICE OF MOTION AND MOTION TO DISMISS FIRST AMENDED CLASS ACTION COMPLAINT** was filed electronically in the Court's Electronic Filing System ("ECF"); thereby upon completion, the ECF system automatically generated a "Notice of Electronic Filing" ["NEF"] as service through CM/ECF to registered email addresses to parties of record in the case, in particular on the following:

Attorneys for Plaintiff Michael Lerma and Jeremy Gaatz, on Behalf of Themselves and All Others Similarly Situated:

Manfred Patrick Muecke , Jr., Esq.; Email: mmuecke@bffb.com
Bonnett Fairbourn Friedman and Balint PC
600 West Broadway, Suite 900
San Diego, CA 92101
Tel: (619) 756-7748

Elaine A. Ryan, Esq.; Email: eryan@bffb.com
Lindsey Gomez-Gray; Email: lgomez@bffb.com
Patricia N Syverson, Esq.; Email: psyverson@bffb.com
Bonnett, Fairbourn, Friedman & Balint, PC
2325 East Camelback Road, Suite 300
Phoenix, AZ 85016
Tel: (602) 274-1100; Fax: (602) 798-5860

Stewart Weltman, Esq.; Email: sweltman@weltmanlawfirm.com
Stewart M. Weltman LLC
53 West Jackson, Suite 364
Chicago, IL 60603
Tel: (312) 588-5033

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1 In addition, on June 20, 2013, I served the above-described document on the
2 following parties without registered email addresses *via* postage-paid First Class
3 U.S. Mail by placing a true and correct copy into a sealed envelope addressed as
4 follows:

5 *Attorneys for Plaintiff Michael Lerma and Jeremy Gaatz, on Behalf of Themselves*
6 *and All Others Similarly Situated:*

7 Joseph J. Siprut, Esq.
8 Aleksandra M. S. Vold, Esq.
9 Siprut PC
10 17 North State Street, Suite 1600
11 Chicago, Illinois 60602
12 Telephone: 312.236.0000

12 /s/ Susan L. Germaise
13 _____
14 Susan L. Germaise
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